No. 08-1314

In the Supreme Court of the United States

DELBERT WILLIAMSON, ET AL.,

Petitioners,

v.

MAZDA MOTOR OF AMERICA, INC., ET AL.,

Respondents.

On Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Three

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF THE *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the Nation's business community.

This is such a case. The Chamber's members depend on a robust doctrine of implied preemption as protection against the pushmi-pullyu of state and local mandates that conflict or interfere with requirements imposed by federal law. Such protection is especially important in cases (such as this), which involve federally imposed design requirements that not only govern nationally distributed, mobile, border-crossing products but also embody a deliberate judgment by a specialized

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[1] The parties' letters of consent to the filing of this brief have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus curiae* states that no counsel for a party has authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, has made a monetary contribution to this brief's preparation or submission.

federal agency based on complex considerations of safety, technological feasibility, and consumer behavior. The Supremacy Clause of the Constitution, which is the fountainhead of the doctrine of implied conflict preemption, serves a vital structural role in our Nation's government and economy by protecting all federal laws, programs, policies and prerogatives against encroachment and interference by subordinate governments (including by juries applying state tort law). Accordingly, the Chamber and its members have a substantial interest in ensuring that this Court resolve the important issues raised by this case correctly.

STATEMENT

1. The Supremacy Clause provides that the Constitution and federal laws and treaties "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2. State and local laws that conflict with federal law are preempted "by direct operation of the Supremacy Clause." *Brown* v. *Hotel & Restaurant Employees & Bartenders Int'l Union Local 54*, 468 U.S. 491, 501 (1984).

This Court's decisions interpreting the Supremacy Clause – and articulating what has come to be known as the doctrine of implied conflict preemption – stretch back to the earliest days of the Republic. See, *e.g.*, *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1 (1824); *Houston* v. *Moore*, 18 U.S. (5 Wheat.) 1 (1820); *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819). "[S]ince our decision in *M'Culloch*," the Court has explained, "it has been settled that state law that conflicts with federal law is 'without effect.'" *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 516 (1992).

The Court's precedents have separately discussed "'conflicts' that prevent or frustrate the accomplishment of a federal objective" (so-called "obstacle" preemption) and "'conflicts' that make it 'impossible' for private parties to comply with both state and federal law" ("impossibility" preemption). *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 873-74 (2000). In *Geier*, this Court recently refused to "drive[] a legal wedge" between the doctrines of obstacle and impossibility preemption, reaffirming its longstanding understanding that "both forms of conflicting state law are 'nullified' by the Supremacy Clause." 529 U.S. at 873-74.

This Court's *test* for obstacle preemption has been the same for almost 70 years, and is derived from *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941): The Supremacy Clause nullifies state or local law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." See also *Perez* v. *Campbell*, 402 U.S. 637, 649-50 (1971) ("Since *Hines* the Court has frequently adhered to this articulation of the meaning of the Supremacy Clause.") (citing multiple cases). But the *doctrine* of obstacle preemption is much older than *Hines*, and indeed goes back to this Court's earliest decisions involving the Supremacy Clause. See *Perez*, 402 U.S. at 649 (obstacle preemption has roots extending at least back to *Gibbons* v. *Ogden*).[2]

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[2] See *Gibbons*, 22 U.S. (9 Wheat.) at 211 (Supremacy Clause nullifies state laws that "interfere with" Congress's statutes); see also *Houston*, 18 U.S. (5 Wheat.) at 22-24 (same for state laws whose enforcement would "thwart[]" or "oppose[]" the "will of Congress," even if they do not contradict federal law); *M'Culloch*, 17 U.S. (4 Wheat.) at 427 ("It is of the very essence of [federal] supremacy, to remove all *obstacles* to its action within its own sphere, and so to modify every power vested in subordinate [state] governments, as to exempt its own operations from their . . . influence.") (Marshall, C.J.) (emphasis added); *Savage* v.

2. This case arises against the backdrop of the National Highway Safety Transportation Administration (NHTSA)'s longstanding regulation of automobile safety pursuant to the National Traffic and Motor Safety Vehicle Safety Act of 1966 (Safety Act), 49 U.S.C. §§ 30101 *et seq.*, as amended. In enacting the Safety Act, Congress left no doubt that it intended to displace state and local law by including the following provision (entitled "Preemption"):

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. § 30103(b)(1).

The Safety Act also includes a provision described by this Court in *Geier* as the "saving" clause, which states:

> Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

49 U.S.C. § 30103(e). Although now included in the same section as the preemption clause as a result of a recodification in 1994, these two provisions were much more widely separated in the Safety Act as originally enacted. See 15 U.S.C. §§ 1392(d), 1397(k) (1988). In *Geier*, this Court authoritatively interpreted both provisions. It also clarified the implied preemption

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Jones, 225 U.S. 501, 533 (1912) (a "state law must yield" if it prevents "the purpose of" a federal law from being accomplished or "frustrate[s]" the federal law's "operation").

principles that govern the relationship between (a) federal motor vehicle safety standards (FMVSSs) promulgated by NHTSA under the Safety Act, and (b) state-law requirements imposed through common-law tort actions.

3. This lawsuit, which arises out of an unusual and tragic automobile accident in Utah, was initiated in the California state courts. Petitioners' basic theory of liability is that the 1993 Mazda MPV Minivan involved in the accident was defective because the middle-row center aisle seat had a lap-only (Type 1) seatbelt when it should have had a lap/shoulder (Type 2) seatbelt. Five of the seven seats in the vehicle had Type 2 belts. At the time the accident vehicle was manufactured, a federal safety standard governing occupant crash protection, FMVSS 208, 49 C.F.R. § 571.208 (1987), gave manufacturers the option of installing either a Type 1 or a Type 2 seatbelt in a middle-row center aisle seat.

The trial court ruled that petitioners' claims were impliedly preempted by FMVSS 208 because they sought to impose liability on the manufacturer for choosing the wrong seatbelt option granted by federal law. Pet. App. 5a-6a. The California Court of Appeal affirmed, joining a virtually unbroken line of post-*Geier* decisions by the lower courts upholding the defense of implied preemption in cases involving claims identical or similar to petitioners'. Pet. App. 15-18, 21-22, 24, 27. The California Supreme Court declined further review.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case can and should be decided under the "ordinary" principles of conflict preemption that were restated and applied in *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 870-71 (2000). Nevertheless,

petitioners – and several of their supporting *amici* – urge this Court to go far beyond what it is necessary to decide this case and make radical and unwarranted changes to the doctrine of implied conflict preemption. The Chamber files this brief to address these arguments. Although many of these arguments would require this Court to overrule *Geier*, their proponents do not always acknowledge this fact, nor do they even attempt to provide the "special justification" required before a precedent of this Court is overruled. *Arizona* v. *Rumsey*, 467 U.S. 203, 212 (1984).

The arguments of petitioners and their *amici* for wholesale changes to settled principles reflect a profound misunderstanding of the vital importance – and deep historical roots – of the doctrine of implied conflict preemption in our constitutional scheme. As this Court has repeatedly recognized, the implied preemption doctrine flows directly from the Supremacy Clause itself. And every form of implied conflict preemption – including obstacle preemption – has deep roots in this Court's decisions. Not surprisingly, then, this Court has repeatedly refused to "drive[] a legal wedge" between obstacle and impossibility preemption and has made clear that there are "no grounds . . . for attempting to distinguish among types of federal-state conflict for purposes of analyzing whether such a conflict warrants pre-emption in a particular case." *Geier*, 529 U.S. at 873-74. And with good reason: obstacle and impossibility preemption serve equally crucial (albeit distinct) roles in protecting *all* of federal law and *all* federal regulatory programs from interference by state, municipal, and local governments.

Nevertheless, petitioners and their *amici* urge this Court to single out obstacle preemption for disfavored treatment or even abolish it altogether. According to

petitioners and some of their *amici*, obstacle preemption is somehow less important or entitled to less respect under the Supremacy Clause. They also contend that obstacle preemption should be jettisoned because it contains too much discretionary leeway and therefore federal and state judges cannot be trusted to apply it faithfully.

These arguments are meritless. Federalism provides no basis for declining to give full effect to the Supremacy Clause by tolerating state and local laws that conflict with federal law by frustrating Congress's purposes. Nor does it make any sense that the Framers would have wanted subordinate governments to remain free to frustrate and defeat federal laws and programs. Moreover, as the origins of the Supremacy Clause make clear, the Framers chose to assign responsibility for ensuring the supremacy of federal law *to the judicial branch* in the first instance. Obstacle preemption is part of that assignment, as this Court's earliest preemption cases recognize. What is more, recent scholarship has established that the Supremacy Clause is in the form of a "*non obstante*" clause – a directive specifically aimed *at judges* and instructing them *not* to construe federal laws narrowly to avoid conflicts with state laws. Finally, contrary to the arguments of petitioners and their *amici*, the inquiry into obstacle preemption is no more subjective than many other legal issues that judges are routinely called upon to decide.

ARGUMENT

As respondents demonstrate (Br. 2-3, 22-24), this case can (and should) be resolved simply by applying the legal framework articulated more than a decade ago in *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000), to a different portion of FMVSS 208, the same

motor vehicle safety standard that was at issue in *Geier*. The United States agrees with this approach, although it disagrees about the result. See U.S. Br. 8, 10-12. As respondents show, however, *Geier*'s legal framework requires affirmance because, as the lower court correctly held, petitioners' tort claims interfere and conflict with NHTSA's deliberate judgment, based on safety and other relevant considerations, that manufacturers of 1993 model year passenger vehicles should remain free to install either of two specified types of seatbelts on a middle-row, center aisle seat. Under settled principles of implied preemption law that were restated and applied in *Geier*, that claim is clearly preempted.

Perhaps grasping that they cannot win under *Geier*, petitioners and some of their *amici* shoot for the moon, urging this Court to overrule *Geier* in multiple respects (not all of which they acknowledge). And they go even further, urging the Court to perform radical surgery on the doctrine of implied preemption by doing away entirely with obstacle preemption and drastically shrinking other forms of ordinary conflict preemption. See, *e.g.*, Pet. Br. 21 (arguing that conflict preemption should operate only where there is "clear evidence" of "an irreconcilable conflict" between federal and state law); Public Justice Br. ("PJ Br.") 34-35 (urging nullification of "obstacle" preemption and further limitation of conflict preemption); American Ass'n for Justice Br. ("AAJ Br.") 7-13 (same). As explained below, these arguments are based on serious misunderstandings concerning the origin, nature, and vital importance of the doctrine of implied preemption in all of its varied forms.

I. THE COURT SHOULD DECLINE THE INVITATION OF PETITIONERS AND THEIR *AMICI* TO OVERRULE *GEIER*

Throughout their brief, petitioners devote substantial attention to trying to distinguish *Geier*, emphasizing repeatedly that although both that case and this involve FMVSS 208, *Geier* involved the 1984 version of that regulation (not the 1989 version), the standards governing passive restraints (not seatbelts), and the front seating position (not the rear inboard position). Pet. Br. 12-13, 15-16, 21-22, 26-27, 35-44. Although these factual differences are certainly true, they do not provide any reason to apply a different *legal framework* to the task of analyzing the implied preemption issue before the Court. See Resp. Br. 22. As the government acknowledges (U.S. Br. 8, 11), this case should be resolved by applying the *Geier* framework to the relevant version and regulatory standards of FMVSS 208 that are at issue in this case. There is simply no need to address broader arguments (including the so-called "options only" theory that so much of petitioners' brief is devoted to attacking). See Resp. Br. 23-24 & n.9.[3]

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[3] At various points, petitioners and their *amici* suggest that *Geier* tacitly *rejected* the broader "options only" theory because (they say) this Court was "well aware of" it but "adopted a much narrower theory of implied conflict preemption." Pet. Br. 29-30; see also Attorneys Information Exchange Group Br. 33 (claiming that this is the "core teaching" of *Geier* because "[i]f the mere existence of regulatory options were sufficient to preempt tort claims, then" the Court "would not have needed to address the complex policy reasons underlying the air bag phase-in"). This argument confuses the Court's decision *not to reach or address* a broader theory of preemption with a *rejection* of that unexamined theory.

In multiple ways, petitioners and their *amici* advance arguments that effectively ask this Court to revisit and overrule *Geier*. As this Court has repeatedly made clear, however, principles of *stare decisis* place a heavy burden on those seeking to overturn precedent. See, *e.g.*, *Arizona* v. *Rumsey*, 467 U.S. 203, 212 (1984) ("special justification" required for overruling precedent). In making their various arguments for overruling *Geier*, petitioners and their *amici* fail to acknowledge this high hurdle and do not even come close to providing the requisite "special justification" for the many volte-faces they advocate.

A. *Geier* Established That Ordinary Principles Of Implied Conflict Preemption, Undistorted By Special Burdens Or Presumptions, Apply To The Safety Act

As a threshold matter, petitioners argue that to prevail, respondents must overcome "the strong presumption against preemption." Pet. Br. 21, 23; see also Illinois et al. Br. ("Ill. Br.") 8, (claiming that affirmance would "do violence to the presumption against federal preemption"); *id.* at 10, 25 (same). Petitioners never acknowledge, however, that an indistinguishable argument was rejected in *Geier*. In *Geier*, the plaintiff argued that any proponent of a defense of implied preemption under the Safety Act must carry a "special burden." 529 U.S. at 870-74. This Court emphatically rejected that argument:

> Neither do we believe that the pre-emption provision, the saving provision, or both together, create some kind of "special burden" beyond that inherent in ordinary pre-emption principles – which "special burden" would specially disfavor preemption here. . . . [N]othing in the Safety Act's

> language refers to any "special burden." . . . Nothing in the statute suggests Congress wanted to complicate *ordinary experience-proved principles of conflict pre-emption* with an added "special burden."

Id. at 870, 872, 874 (emphasis added). Instead, the Court explained, "ordinary conflict pre-emption principles" apply. *Id.* at 871; see also *id.* at 874 (same).

The Court had good reasons for rejecting this plea for imposition of a "special burden." Such a requirement, the Court explained, would "promise practical difficulty by further complicating well-established pre-emption principles that already are difficult to apply." 529 U.S. at 873; see also *ibid.* (citing "considerations of . . . administrative workability"). In addition, limiting the "special burden" to arguments based on obstacle preemption would create complexities and "complicat[ions]" and "would engender legal uncertainty with its inevitable systemwide costs." *Id.* at 874. Finally, the Court held that "two provisions" of the Safety Act – the preemption provision and the "saving" clause – when "read together, reflect a *neutral policy*, not a specially favorable or unfavorable policy, towards the application of ordinary conflict pre-emption principles." *Id.* at 870-71 (emphasis added). For all of these reasons, this Court rejected the proposed "special burden" requirement and made clear that "ordinary experience-proved principles of conflict pre-emption" must be applied. *Id.* at 874. This reasoning dooms petitioners' heavy reliance on a "strong presumption against preemption" and their related insistence that, to prevail, respondents must provide "clear evidence" of "an irreconcilable conflict." Pet. Br. 21, 23.

B. *Geier* Rejected The Argument That Obstacle Preemption Should Be Treated Differently From Other Forms Of Conflict Preemption

Next, petitioners and their *amici* argue that obstacle preemption is somehow suspect and thus should be treated differently from other types of implied conflict preemption. Indeed, *amici* go so far as to urge the Court to do away with obstacle preemption. See PJ Br. 34-35; AAJ Br. 7-13. For reasons discussed in Section II below, the various criticisms of obstacle preemption they advance are meritless. For present purposes, however, what is important is that *Geier* itself rejected this very argument:

> The Court has not previously driven a legal wedge – only a terminological one – between "conflicts" that prevent or frustrate the accomplishment of a federal objective and "conflicts" that make it "impossible" for private parties to comply with both state and federal law. Rather, it has said that both forms of conflicting state law are "nullified" by the Supremacy Clause, . . . and it has assumed that Congress would not want either kind of conflict. . . . We see no grounds, then, for attempting to distinguish among types of federal-state conflict for purposes of analyzing whether such a conflict warrants pre-emption in a particular case.

529 U.S. at 873-74 (citations omitted).

The Court's refusal to treat obstacle preemption as a special or disfavored kind of implied preemption did not originate in *Geier*. Almost 60 years before *Geier*, in *Hines* v. *Davidowitz*, 312 U.S. 52 (1941), this Court acknowledged the variety of verbal formulations it had used to describe state laws that are nullified because they stand in conflict with federal law: "This Court, in

considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; . . . repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference." *Id.* at 67. At the same time, however, the Court refused to draw distinctions or create hierarchies among these forms of conflict, explaining that "none of these expressions provides an infallible constitutional test or *an exclusive constitutional yardstick*." *Ibid.* (emphasis added).

In rejecting the argument for disfavored treatment of obstacle preemption, the Court in *Geier* again explained that such an approach would "promise practical difficulty by further complicating well-established pre-emption principles." 529 U.S. at 873. "That kind of analysis," the Court added, would also create uncertainty "as courts tried sensibly to distinguish among varieties of 'conflict' (which often shade, one into the other) . . . ." *Id.* at 874. Here again, neither petitioners nor their *amici* make even the slightest effort to explain why this holding in *Geier* should now be overruled.

C. *Geier*'s Understanding Of The Safety Act's "Saving" Clause Is Correct And Should Not Be Overruled

Purporting to find "contradictory conclusions" as well as "confusion" and "equivocation" in *Geier*'s analysis of the Safety Act's "saving" clause, 49 U.S.C. § 30103(e), petitioners' *amici* ask the Court to "clarify" that provision's meaning. PJ Br. 2-3, 21-23. In fact, this Court's analysis in *Geier* of the "saving" clause was quite clear, and what *amici* are really requesting (as they put it in one their more unguarded moments) is

that the Court "reconsider" *Geier*'s interpretation. *Id.* at 2; cf. also Ill. Br. 25 (stating that *Geier* "deprive[d] the saving clause of its full effect" and this "make[s] it a strong candidate for reexamination by the Court at some point"). Like the other arguments advanced by petitioners and their *amici* for overruling *Geier*, this argument is wrong and should be rejected.

In *Geier*, this Court made clear that the saving clause does not "save" common-law requirements that would otherwise be preempted by operation of the Safety Act's preemption provision, 49 U.S.C. § 30103(b)(1). Instead, the clause is directed not at preemption at all but rather at the state-law affirmative defense of compliance with government standards. At bottom, the "saving" clause's function is to ensure that common-law liability for compensatory damages is not defeated though the application of the state-law compliance defense.

American tort law has long recognized the "important distinction" between: (1) regulatory compliance as an affirmative defense to common-law and other tort liability, and (2) federal preemption of state law. RESTATEMENT OF THE LAW (THIRD): PRODUCTS LIABILITY § 4, cmt. e (1998) ("RESTATEMENT (THIRD)"). As the American Law Institute has explained (*ibid.*):

> When a court concludes that a defendant is not liable by reason of having complied with safety design or warnings statutes or regulation, it is deciding that the product in question is *not defective as a matter of the law of that state*. . . . In contrast, in federal preemption, the court decides as a matter of *federal law* that the relevant federal statute or regulation reflects, expressly or impliedly, the

> intent of Congress to *displace state law*, including state tort law, with a federal statute or regulation. . . . [A] determination that there is preemption nullifies otherwise operational state law.

See also RESTATEMENT OF THE LAW (SECOND) OF TORTS § 288C (1965). The compliance-with-government-standards defense is a close cousin of the tort-law doctrine under which *noncompliance* with a relevant safety standard is sometimes regarded as negligence *per se*. See RESTATEMENT (THIRD) § 4, cmt. d. Nearly every state recognizes the affirmative defense of regulatory compliance. See III. Br. 30-31.

The Safety Act's "saving" clause makes no mention of preemption and instead clearly targets the compliance defense under state law. See 49 U.S.C. § 30103(c) ("*Compliance* with a motor vehicle safety standard prescribed under this chapter does not *exempt* a person from liability at common law.") (emphasis added). In *Geier*, the Court recognized this and acknowledged the important distinction between preemption and the compliance defense. Significantly, the Court in *Geier* did *not* hold that the "saving" clause operated by its own force to "save" common-law claims from preemption under the statute's express preemption clause. Instead, as petitioners at one point acknowledge (Pet. Br. 13), the Court relied on the "saving" clause only indirectly, as a reason why the preemption clause must be interpreted narrowly to exclude "standards" imposed through common-law actions. See 529 U.S. at 867-68.[4]

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[4] The Court went on to explain that, "[w]ithout the saving clause, . . . it is possible to read the pre-emption provision, standing alone, as applying to standards imposed in common-law tort actions." 529 U.S. at 868. But if that reading were accepted, the preemption clause "would pre-empt all nonidentical state

The Court in *Geier* went on, moreover, to squarely *reject* the argument that the "saving" clause operated to "save" common-law claims from any form of *implied* preemption. 529 U.S. at 869-74. Accord Pet. Br. 13. In so doing, the Court expressly noted that the language of the "saving" clause did not appear to be aimed at preemption at all. Invoking the *Restatement* and specifically citing the distinction "between state-law compliance defense and a federal claim of pre-emption," the Court explained:

> The words "[c]ompliance" and "does not exempt," 15 U.S.C. § 1397(k) (1988), *sound as if they simply bar a special kind of defense*, namely, a defense that compliance with a federal standard *automatically* exempts a defendant from state law, whether the Federal Government meant that standard to be an absolute requirement or only a minimum one.

Geier, 529 U.S. at 869-70 (emphasis added).

Thus, the Court in *Geier* squarely held that the "saving" clause does not function to "save" common-law that would otherwise fall within the scope of the preemption clause, but rather affects preemption only in an indirect way, by necessitating a narrower reading of the Safety Act's preemption clause. This conclusion was based on extensive briefing on the issue in *Geier* as well as the Court's concern that a broader reading of the

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standards established in tort actions covering the same aspect of performance as an applicable federal standard, even if the federal standard merely established a minimum standard." *Ibid.* If that were true, then "few, if any, state tort actions would remain" that the saving clause could possibly "save" from being defeated by the compliance defense. *Ibid.* To preserve some meaningful function for the "saving" clause, therefore, the Court interpreted the Safety Act's preemption clause narrowly as excluding "standards" imposed though common-law actions. Accord Pet. Br. 13.

"saving" clause "would upset the careful regulatory scheme established by federal law." 529 U.S. at 870 (citing *American Tel. & Tel. Co.* v. *Central Office Tel., Inc.*, 524 U.S. 214, 227-28 (1998)). Moreover, Congress knows full well how to save certain requirements from an express preemption clause and indeed has done so in the Safety Act itself by specifying, for example, that "identical" state and local standards are excluded. 49 U.S.C. § 30103(b)(1). Congress also knows how to draft a stand-alone provision aimed at saving certain state or local laws from preemption (as opposed to the compliance defense). It has done so many times.[5]

Despite *Geier*'s holding that the Safety Act's "saving" clause saves common-law claims from the regulatory compliance defense and not from preemption (or from the preemption clause), the government states that "petitioners' cause of action is *saved from preemption by the saving[] clause*" unless it fails the test for obstacle preemption. U.S. Br. 10-11 (emphasis added); see also *id.* at 2-3 (stating that *Geier* "held that the saving[] clause removes common-law tort actions from the scope of the express preemption clause"). Petitioners likewise at one point claim that "*Geier* expressly held that the Safety Act's saving[] clause *preserves* common-law actions seeking to establish greater vehicle safety than a regulatory standard setting a safety floor." Pet. Br. 26. Petitioners fail to mention, however, that such preservation occurs

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[5] See, *e.g.*, 7 U.S.C. § 2910(a) ("Nothing in this chapter may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State."), *id.* § 4512(a) ("Nothing in this chapter may be construed to preempt or supersede . . . ."); *id.* § 6109 (same); 10 U.S.C. § 2694(d); 15 U.S.C. § 77s(c)(3)(C); 16 U.S.C. § 831c-3(d); 20 U.S.C. § 6737(e); 42 U.S.C. § 247–4n(f).

because of the "saving" clause's impact on the defense of regulatory compliance, not on preemption. Given the "saving" clause's true target, it simply makes no sense to suggest (as the government does) that the "saving[] clause would be greatly undermined" (U.S. Br. 19) if petitioners' claims were held to be impliedly preempted.

At the end of the day, petitioners' *amici* provide no persuasive reason why this Court should overrule *Geier*'s interpretation of the saving clause. Although that is reason enough to reject their arguments, it is worth noting that *amici* do not seem to grasp the full ramifications of their revisionist position. If this Court were to repudiate its interpretation of the "saving" clause and instead hold that Congress "intended to 'save' from preemption claims that a car maker should have done more than the minimum required by a federal auto safety standard" (PJ Br. 3), that would *also* necessarily require the Court to revisit and abandon its narrow interpretation of the Safety Act's *preemption provision*. The reason is simple. It is not possible for the "saving" clause to "save" state-law requirements from the preemption clause unless those requirements are covered by the preemption clause in the first place. Thus, to adopt *amici*'s interpretation of the "saving" clause, the Court would need to first hold that the preemption clause's reference to "standards" includes common-law duties. Whatever else petitioners' *amici* might say about the Safety Act, we are quite confident they would oppose that result.

II. THE COURT SHOULD REJECT THE BROADER INVITATION TO ABOLISH OBSTACLE PREEMPTION OR OTHERWISE ALTER THE SETTLED LAW OF IMPLIED PREEMPTION

Petitioners' *amici* are not content simply with asking this Court to overrule *Geier* in multiple respects. They go further and launch a frontal attack on the doctrine of obstacle preemption itself, urging the Court to nullify that doctrine and make a variety of other radical changes to settled law (such as limiting implied conflict preemption to the exceedingly narrow category of cases where it is physically impossible to comply with both federal and state mandates). See, *e.g.*, PJ Br. 34-35 (urging nullification of "obstacle" preemption); AAJ Br. 7-13 (arguing that obstacle preemption should be reduced to "impossibility" preemption). *Amici* purport to find support for these far-reaching arguments in the history and language of the Supremacy Clause and in principles of federalism. Constitutional Accountability Center Br. 2-7; AAJ Br. 2, 8, 34-37. At every turn, however, their arguments reflect a profound misunderstanding of origins and function of the Supremacy Clause as well as of this Court's implied preemption decisions. As explained below, the doctrine of implied conflict preemption (including obstacle preemption) has deep roots in the Supremacy Clause and serves a vital structural role in protecting the national government and federal laws from interference by States and localities.

A. The Doctrine Of Conflict Preemption Flows Directly From The Supremacy Clause, Which The Framers Adopted Over Structural Alternatives To Entrust The Judiciary With The Responsibility To Police Conflicts Between State And Federal Law

Federal preemption of state and local law is an ordinary, intended – and indispensable – feature of our constitutional scheme. Congress's authority to legislate preemptively pursuant to its powers enumerated in Article I of the Constitution, including the Necessary and Proper Clause, U.S. CONST. art. I, § 8, is beyond dispute and has been described by this Court as "[a] fundamental principle of the Constitution." *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372 (2000).[6] In scores of statutes covering a wide array of subjects, Congress has elected to include provisions that expressly preempt state and local law.

Moreover, it is beyond dispute that Congress's handiwork has a preemptive effect even in the absence of such express preemption provisions. This result flows directly from the Supremacy Clause, which the Framers of the Constitution included to remedy glaring shortcomings in the Articles of Confederation. See

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[6] This constitutional basis is important because it explains why the exercise of preemptive authority by Congress raises no serious concern under the Tenth Amendment, which provides that "[t]he powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, *are reserved* to the States respectively, or to the people." U.S. CONST. amend. X (emphasis added). "If a power *is* delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has *not* conferred on Congress." *New York* v. *United States*, 505 U.S. 144, 156 (1992) (emphasis added).

Hughes v. *Oklahoma*, 441 U.S. 322, 325 (1979) (the Framers believed that "to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations . . . among the States under the Articles of Confederation"). One legal scholar has aptly summarized the shortcomings of the Articles of Confederation:

> In the absence of something like the Supremacy Clause, state courts might have sought to analogize federal statutes to the law of a foreign sovereign, which they could ignore under principles of international law. . . .[Moreover,] [t]he Articles had not been ratified by conventions of the people in each state; states had manifested their assent merely by passing ordinary statutes authorizing their delegates to sign the Articles . . . . James Madison fretted that as a result, "whenever a law of a State happens to be repugnant to an act of Congress," it "will be at least questionable" which law should take priority . . . .

Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 247-48, 251 (2000) (quoting James Madison, *Vices of the Political System of the United States* (Apr. 1787), in 9 PAPERS OF JAMES MADISON 345, 352 (R. Rutland & W. Rachal eds. 1975)).

To address these structural deficiencies in the Articles, the Framers included the Supremacy Clause, which broadly provides that "the Laws of the United States . . . shall be the *supreme* Law of the Land . . . *any* Thing in the Constitution or Laws of *any* State *to the Contrary notwithstanding*." U.S. CONST. art. VI, cl. 2 (emphasis added). The federalism principles embodied in the Supremacy Clause plainly favor federal over state authority, not vice versa as petitioners' *amici* suggest.

As a consequence of the Supremacy Clause, all federal laws are automatically preemptive of state and local laws to the extent that the latter impose conflicting obligations or requirements.

To understand the importance and vital role of the Supremacy Clause, and to see the error of petitioners' *amici*'s arguments, it is useful briefly to review the Supremacy Clause's genesis in the Constitutional Convention. During the Convention, the Founders considered "three mechanisms for resolving conflicts between federal and state law." Bradford Clark, *Separation of Powers As A Safeguard of Federalism*, 79 TEX. L. REV. 1321, 1348 (2001).

First, the Virginia (or Large State) Plan proposed "authorizing the Union to use military force to coerce the states to comply with federal law." Bradford Clark, *Unitary Judicial Review*, 72 GEO. WASH. L. REV. 319, 325 (2003). But "[t]he delegates were immediately opposed to the use of force" and "[t]he Convention tabled the proposal and never seriously entertained this alternative." *Id.* at 325-26 & nn.44-47.

Second, the Virginia Plan alternatively recommended "that the National Legislature ought to be impowered . . . to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union . . . ." James Madison, *Notes on the Constitutional Convention* (May 29, 1787), in 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 21 (Max Farrand ed. 1911) ("FARRAND'S RECORDS"). Under this "congressional negative" as originally proposed, Congress alone would have had the power to "negative" all state laws that, in Congress's judgment, violated the federal Constitution. The delegates apparently envisioned the congressional

negative, by analogy to the Crown's prerogative to approve Colonial laws, as operating to *prevent* state laws from going into effect *until* Congress acted (except in special circumstances).[7]

Third, the New Jersey Plan included a resolution that "was in substance and concept, if not in form, similar to the current language of the Supremacy Clause." Viet Dinh, *Reassessing the Law of Preemption*, 88 GEO. L.J. 2085, 2089 (2000). It "would have required state courts (subject to federal appellate review) to enforce the Laws of the United States . . . as 'the supreme law of the respective States.'" Clark, *supra*, 72 GEO. WASH. L. REV. at 327 (quoting 1 FARRAND'S RECORDS 245).

The Convention initially approved the "congressional negative" in its original form. *Id.* at 326. But Charles Pinckney "moved to expand the negative" by giving Congress the power to negate any state law that Congress regarded as "improper" (rather than merely contrary to the federal Constitution). At that point, the small-State delegates strongly objected, and the Convention not only rejected Pinckney's proposal but also "subsequently reconsidered and rejected even the original congressional negative." *Ibid.* Even the original congressional negative was unacceptable to a

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[7] See, *e.g.*, 2 FARRAND'S RECORDS 27 (Madison) (arguing that anything short of the congressional negative would be ineffective because it would allow the States to "pass laws which will accomplish their injurious objects before they can be repealed" by Congress or invalidated by the federal courts); *ibid.* (Martin) (in criticizing the proposed congressional negative, posing the following rhetorical question: "Shall all the laws of the States be sent up to the Genl. Legislature before they shall be permitted to operate?"); *id.* at 390 (Mason) (voicing identical concern); 1 FARRAND'S RECORDS 167 (Bedford) (same).

majority of States because it "would have allowed *Congress* to determine for itself the scope of its powers vis-à-vis the states." *Ibid.* (emphasis added).

"Although th[e] 'Supremacy Clause' [in its initial form] was originally rejected as part of the New Jersey Plan, the Convention subsequently adopted the Clause immediately after rejecting the congressional negative." *Id.* at 327. In so doing, the Convention rejected the arguments of James Madison (who had been the primary drafter of the Virginia Plan) that adoption of the congressional negative was "essential to the efficacy & security of the Genl. Govt." 2 FARRAND'S RECORDS 27. Disagreeing with Madison, Gouverneur Morris explained that any "law that ought to be negatived *will be set aside in the Judiciary departmt.* and if that security should fail; may be *repealed by a Nationl. law.*" *Id.* at 28 (emphasis added). Similarly, Roger Sherman argued that the congressional negative was "unnecessary" because the state courts "would not consider as valid any law contravening the Authority of the Union, and which the legislature would wish to be negatived." *Id.* at 27.

As the foregoing history make clear, the Convention delegates who opposed the congressional negative did so because, among other things, they viewed it as unnecessary once the Supremacy Clause had been included in the Constitution. The Supremacy Clause *assigned to the courts* in the first instance the duty to ensure that state laws that were inconsistent with federal laws would be accorded no effect (and thus preempted). Failing that, Congress could always take further action by passing preemptive laws to address the situation.

Finally, the specific language of the Supremacy Clause confirms the Framers' intent that it be enforced by the Judiciary. See U.S. CONST. art. VI, cl. 2 ("This Constitution, and the Laws of the United States . . . and all Treaties . . . shall be the supreme Law of the land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). The first clause establishes a hierarchy of federal law and authority; the second is expressly directed at "Judges." As for the third clause – "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" – recent scholarship has established that its form would have been understood by the Framers (and eighteenth-century judges) as a so-called "*non obstante*" clause. Such clauses were specifically *directed at courts* and understood as an instruction *not* to employ the traditional presumption against implied repeals (which might induce strained interpretations to harmonize a later federal law with an earlier state regulation), but instead to give a federal statute its most reasonable construction and allow it to displace whatever state law it contravened when so construed. See Nelson, *supra*, 86 VA. L. REV. at 232, 235-44, 291-303. The *non obstante* form of the Supremacy Clause, then, confirms the Framers' plan to vest responsibility for interpreting and enforcing the Supremacy Clause in the judiciary. *Id.* at 232, 245-64. In light of this history, there is no merit whatsoever to the repeated suggestion of petitioners' *amici* that there is something illegitimate or questionable about the role of federal and state judges in deciding issues of implied conflict preemption under the Supremacy Clause.

B. This Court Has Long Recognized Obstacle Preemption, Which Serves An Important Function Distinct From Other Forms Of Conflict Preemption

As noted above (at pages 2-3 & n.2), this Court has elucidated the meaning of the Supremacy Clause and the doctrine of implied conflict preemption in a long line of cases stretching back almost 200 years. Although the doctrine of obstacle preemption has roots in the Court's early cases, the current *test* for obstacle preemption originated in *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941), a 70-year-old precedent that petitioners' *amici* describe as "relatively recent[]" (AAJ Br. 10).

This Court's decisions leave no doubt that obstacle preemption is an "articulation of the meaning of the Supremacy Clause" itself. *Perez* v. *Campbell*, 402 U.S. 637, 649 (1971). Illustrative is *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819), where Chief Justice Marshall explained that, by virtue of the Supremacy Clause, "the government of the Union, though limited in its powers, is supreme within its sphere of action," so that duly enacted federal statutes must prevail over contrary state laws. *Id.* at 405-06, 425-26, 432, 436. Accordingly, the Court held, the State of Maryland could not exercise its general power to tax in a manner that would destroy, impede, or burden the operation of a specific agency created by a valid federal law (the Bank of the United States). *Id.* at 425-37. As Chief Justice Marshall explained in language suggestive of obstacle preemption, "It is of the very essence of [federal] supremacy, to remove all *obstacles* to its action within its own sphere, and so to modify every power vested in subordinate [state] governments, as to exempt its own operations from their . . . influence." *Id.* at 427 (emphasis added).

As explained above (at 12-13), this Court in *Geier* and other cases has repeatedly rejected the argument that it should draw distinctions between the various types of conflict preemption. The Court's repeatedly unwillingness to do what *amici* request – create a hierarchy of theories of conflict preemption – is perfectly understandable. To begin with, conflicts and inconsistencies between federal and state law take on myriad forms that are difficult to capture in a single verbal formulation. In addition, obstacle and impossibility preemption each serve a vital function in our constitutional scheme. Impossibility preemption addresses the narrow class of situations where both federal and state law impose mandates on a regulated party – and it is simply not possible to comply simultaneously with both mandates. See R. FALLON, JR., D. MELTZER, & D. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM, at 725 (5th ed. 2003) ("impossibility" preemption cases are "easier but far rarer" than cases involving ordinary conflict preemption). If the federal government commands a citizen to do X and a state law requires a citizen *not* to do X (or makes doing X a crime), there is no way to comply with both the federal and state requirements. In that circumstance, the state command must yield. See, *e.g.*, *Southland Corp.* v. *Keating*, 465 U.S. 1, 10, 16 (1984) (Congress's decision to "mandate[] the enforcement of arbitration agreements" preempts California's mandate that such agreements be invalidated in certain situations).

But federal laws and regulatory regimes can be severely undermined and even destroyed even in the absence of such diametrically opposed commands or requirements. For example, if Congress passes a law guaranteeing the right of all workers to join a union,

and a State makes it a felony offense to join a union, it is *not impossible* to comply with both laws; by declining to exercise the federally created right, a worker can easily comply with both laws. But the state law in this scenario so clearly undermines and burdens the federal right to join a union – and frustrates the purpose of the federal statute, which is to safeguard the right to join a union and perhaps to encourage union membership – that it obviously cannot stand under the Supremacy Clause.

Indeed, this Court has routinely applied obstacle preemption even when the burden imposed on federal rights was far less dramatic than in this hypothetical example. For example, in *Felder* v. *Casey*, 487 U.S. 131 (1988), the Court ruled that 42 U.S.C. § 1983 preempted a Wisconsin notice-of-claim statute that required a civil rights plaintiff to provide written notice (at least 120 days before filing suit) to putative government defendants of the circumstances giving rise to her constitutional claims, the amount of the claim, and her intent to bring suit. In the absence of such notice, the Wisconsin law required the state courts to dismiss the plaintiff's Section 1983 lawsuit. Writing for the Court, Justice Brennan explained that the Wisconsin statute was barred under the doctrine of obstacle preemption because, among other things, it "burdens the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in the federal courts." *Id.* at 141; see also *id.* at 138, 144-45.

That conclusion necessarily depended on a robust doctrine of obstacle preemption, because it plainly was not impossible to comply with both the Wisconsin statute and the requirements of Section 1983. As *Felder* illustrates, the doctrine of obstacle preemption plays a

vitally important role – and a role that complements impossibility preemption – in ensuring the supremacy and full effectiveness of *all* federal laws against incursions and encroachments by the States.

C. The Criticisms Of Obstacle Preemption Advanced By Petitioners And Their *Amici* Are Unfounded

Petitioners' *amici* urge the Court to either repudiate obstacle preemption (and overrule cases like *Felder*) or collapse it into impossibility preemption notwithstanding (a) obstacle preemption's deep roots in the Supremacy Clause and this Court's decisions, (b) the Court's traditional unwillingness to differentiate between types of federal-state conflicts triggering operation of the Supremacy Clause, and (c) the vitally important but distinct roles played by obstacle and impossibility preemption in protecting the national government and federal laws. These arguments seek to take advantage of views expressed by some Members of this Court (and some legal scholars) about perceived uncertainties relating to obstacle preemption. For example, the dissenters in *Geier* referred to "our potentially boundless . . . doctrine of implied conflict pre-emption based on frustration of purposes" and expressed concern that obstacle preemption vests too much discretion in "unelected federal judges." 529 U.S. 861, 894, 907 (Stevens, J., dissenting). See also REPORT OF THE APPELLATE JUDGES CONFERENCE, AMERICAN BAR ASS'N, THE LAW OF PREEMPTION 38 (1991) (obstacle preemption "demands a high degree of judicial policymaking").[8]

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[8] The principal author of the ABA Report has explained that his views on the doctrine of preemption have changed in response to fundamental changes in the legal landscape that have occurred

These criticisms of obstacle preemption are unfounded. To begin with, obstacle preemption builds on and implements the Court's general, well-settled methodology for resolving conflict preemption issues. "Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes" – federal and state – "and then determining the constitutional question whether they are in conflict." *Perez*, 402 U.S. at 644. Not only are these familiar tasks that the judiciary is uniquely suited to undertake, but they hardly give to judges a blank check. For example, in conducting the conventional inquiry into statutory meaning, a federal court is bound by the authoritative construction given to the relevant state law by the State's courts. *Ibid.* Moreover, "[t]he relative importance to the State of its own law is *not material* when there is a conflict with valid federal law," and thus need not be weighed by a judge, "for the Framers of our Constitution provided that the federal law must prevail.'" *Fidelity Fed. Savings & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153 (1982) (emphasis added) (quoting *Free* v. *Bland*, 369 U.S. 663, 666 (1962)).

To be sure, the judicial decision as to exactly when the tension between state and federal laws rises to the level of a "conflict" is undeniably a matter of judgment. See *Crosby* v. *National Foreign Trade Council*, 530 U.S.

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since 1991. See Kenneth Starr, *Preface*, in FEDERAL PREEMPTION: STATES' POWERS, NATIONAL INTERESTS xi, xv (R. Epstein & M. Greve eds. 2007); see also *id.* at xvi (suggesting that Congress "cannot possibly police and redress every improper incursion on federal authority by legislative, executive, and judicial branches of all 50 state governments" and concluding that, "[i]f that job is to be done at all, it must be the federal judiciary that does it"). Cf. AAd Br. 12; PJ Br. 34 n.14.

363, 373 (2000) ("What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects[.]"). The critical question in every case (as in this case) is the extent of the inconsistency between state and federal law and whether that amount is sufficient, under the Supremacy Clause, to trigger conflict preemption. But as *Geier* made clear, such constitutional-law judgments do not require courts to "calculate the precise size of the 'obstacle[]'" based on "incentive or compliance considerations" that might be speculative or uncertain. 529 U.S. at 882. In any event, the same types of judgments are required for other forms of implied conflict preemption.

True, obstacle preemption can require judges to identify the congressional or regulatory "purpose" that allegedly is being thwarted by state law. That task, however, is hardly "open-ended" and completely "subjective," as *amici* suggest. AAJ Br. 3, 10, 12. On the contrary, it is quite familiar to judges who routinely engage in the interpretation of statutes and regulations based on traditional legal materials and sources. Furthermore, Congress (and administrative agencies) often declare their purposes explicitly in a statute or regulation or in the accompanying legislative or regulatory materials. At bottom, the inquiry into "purpose" is no less subjective than the inquiry into Congress's "intent," which *amici* acknowledge is the touchstone of the preemption analysis. AAJ Br. 9.

Beyond that, courts' judgment calls about the degree of inconsistency between state and federal law involve no more discretion than a wide array of other decisions made by federal and state judges every day. The law is filled with broad concepts – reasonableness, probable cause, excusable neglect, good cause, ordinary

care – that call for the judicial exercise of judgment. And whatever uncertainty and judgment calls might exist in other cases, this case involves a straightforward and direct conflict: a federal regulation explicitly grants manufacturers the freedom to choose one of two design options, the federal agency twice refused to eliminate that option for rear aisle seats, and there is overwhelming evidence that the federal rule at issue was intended to serve federal objectives under the Safety Act that would be severely undermined by state tort actions such as petitioners'. As Justice Thomas has suggested, "if federal law gives an individual the right to engage in certain behavior that state law prohibits, the laws would give contradictory commands notwithstanding the fact that an individual could comply with both by electing to refrain from the covered behavior." *Wyeth* v. *Levine*, 129 S. Ct. 1187, 1209 (2009) (Thomas, J., concurring). In such cases, as here, there is a "direct conflict" between federal and state laws. *Ibid.*

In any event, as explained above, the Supremacy Clause was meant to be *enforced by the courts* (in contrast to the rejected congressional negative, which Congress itself would have deployed). Federal courts are thus the institutions entrusted by the Constitution with the authority to police incursions by the States on the supremacy of federal law. For all of these reasons, this Court should reject *amici*'s request to either abandon obstacle preemption or severely weaken the settled protections of implied preemption.

Finally, we note that petitioners' *amici* are also wrong to lay the blame for the rise in implied preemption cases generally at the feet of a supposedly activist judiciary. PJ Br. 26-27. The causes are more basic and structural in nature. During the last century

(and particularly since the New Deal), in response to fundamental changes in the national economy, there has been a significant expansion of federal law and of the activities of the national government. This includes Congress's creation of dozens of expert, specialized administrative agencies to oversee – and often to comprehensively regulate – complex and important facets of the economy.

By virtue of the Supremacy Clause, the inevitable consequence of this expansion of federal authority has been to increase the likelihood of conflicts with the laws and regulatory efforts of state and municipal governments. *New York* v. *United States*, 505 U.S. 144, 159 (1992) ("As the Federal Government's willingness to exercise power within the confines of the Constitution has grown, the authority of the States has correspondingly diminished to the extent that federal and state policies have conflicted."). The risk of conflict is further enhanced by the existence, at last count, of approximately 87,525 local governmental units in the United States, including more than 3,000 counties, more than 19,000 municipalities, and more than 16,000 towns or townships. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 262 (2004). In light of the proliferation of subordinate government units, and the expansion of federal authority, it should come as no surprise that issues of conflict preemption arise with great frequency today.

CONCLUSION

For the foregoing reasons, the judgment of the California Court of Appeal should be affirmed.

Respectfully submitted.

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